

## **ZONING BOARD OF APPEALS MINUTES**

May 14, 2013 – Regular Meeting  
Delta Township Administration Building

### **I CALL TO ORDER**

Chairman Reed called the meeting to order.

### **II PLEDGE OF ALLEGIANCE**

Chairman Reed led the Board and others present in reciting the Pledge of Allegiance to the Flag.

### **III ROLL CALL**

Members Present: Arking, Barnhart, Hicks, Laforet, Newman, Parr, Reed

Members Absent:

Others Present: Chris Gruba, Assistant Planner and Community Development  
Director Mark Graham

### **IV SET AND ADJUST AGENDA**

Mr. Reed asked if there were any changes to the agenda.

Mr. Gruba said there were no changes.

### **V APPROVAL OF MINUTES**

April 16, 2013 Special Meeting

**MOTION BY PARR, SECONDED BY BARNHART, THAT THE APRIL 16, 2013  
SPECIAL MEETING MINUTES BE APPROVED AS PRESENTED. VOICE VOTE.  
CARRIED 7-0.**

### **VI OLD BUSINESS – None**

### **VII. NEW BUSINESS**

1. **CASE NO. V-13-2-16:** Chris Koulouras, owner of the property at 8205 W. Saginaw Highway, is seeking a variance for required stacking spaces for a restaurant drive-through

## **ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 2**

per Section 18.15.0 C (1) of the delta Township Zoning Ordinance.

Mr. Gruba noted that on May 13<sup>th</sup>, the Planning Commission recommended approval of a special land use permit request for a drive-through window for a Dunkin Donuts in the former BP gas station located on Saginaw Highway, between Marketplace Boulevard and I-96. He noted that the applicant was requesting a variance of two vehicle stacking spaces for the drive-through from the required 10 vehicle stacking spaces required per Section 18.15.0 of the ordinance. Mr. Gruba pointed out that there would be three uses on the site, the first use being a convenience store, the second use being the Dunkin Donuts drive-through, and the third use being the sale of gasoline. He pointed out that the eastern 1/5 of the site was owned by Cracker Barrel which abuts the subject parcel to the east and south as a result of an agreement made in 1964 by Amoco Oil Company and the Cracker Barrel parcel when the gas station obtained a 35 foot wide easement in order to have a second access point on Saginaw Highway. He noted that the agreement was still valid unless both property owners agreed to terminate the agreement. Mr. Gruba noted that the easement must remain open to traffic and unobstructed, but the existing parking spaces within the easement would remain and restriped.

Mr. Gruba provided a project description by noting that the applicant had proposed to remove two of the pump islands and decrease the number of fuel pumps from 12 pumps to 8 pumps in order to improve traffic circulation on the site. He noted that the existing car wash would be converted into storage and that the building addition for Dunkin Donuts would be constructed to the east side of the existing building. There would be one oversized curb cut along Saginaw Highway and two curbcuts along Commercial Drive. Mr. Gruba indicated that the site was designed so that patrons would enter the site from the south curbcut on Commercial Drive for the drive-thru and would likely exit the site via the Saginaw Highway access point. He noted that MDOT had been provided with the proposed site plan and due to the fact that Commercial Drive was a private road, the Eaton County Road Commission had no jurisdiction over the road. Other site changes included the removal of a small landscaped island in the middle of the site that contained vent pipes for the underground fuel tanks and that the venting pipes would be relocated to stand within the existing dumpster enclosure. Mr. Gruba said per information provided by the applicant, there were rarely more than five cars in the stacking lane at one time. The average order took 101 seconds and that there would be an average of 250 cars per day. Both the gas station and the Dunkin Donuts would be open 24-hours per day. Mr. Gruba noted that staff met with the applicant and his architect and looked at different ways to redevelop the site so that a variance would not be required, but due to the very small size of the parcel, there were unique challenges.

Mr. Reed questioned if 10 stacking spaces were standard for restaurant drive-throughs.

Mr. Gruba noted that staff had not studied what other communities required for drive-throughs, but Delta required only four stacking spaces for bank drive-throughs.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 3**

Mr. Reed inquired about the justifications as to why banks were only required to have four stacking spaces.

Mr. Gruba felt it may be due to the fact that banks had multiple drive-through lanes and the intensity of the use.

Mr. Neuman asked if staff had been informed of any traffic concerns expressed by adjacent property owners.

Mr. Gruba said staff had not been contacted by any of the surrounding property owners.

Mr. Neuman questioned if the possibility existed that cars could backup into Commerce Drive.

Mr. Gruba said it was staff's hope that common sense would prevail and that motorists would proceed and park rather than use the drive-through.

Mr. Arking inquired as to whether the 15 parking spaces that would be provided on the site was one more than what was required.

Mr. Gruba said that was correct.

Christopher Koulouras, owner of the subject parcel and his Architect, Marsha Horning, provided the Board with renderings and site plans of the site for the Board's review.

Ms. Horning responded to the Board's questions regarding the number of stacking spaces by noting that she had worked on a number of projects in other communities throughout the state, as well as in other states, for Dunkin Donuts and indicated that 10 stacking spaces for a drive-through was considered a lot and that six stacking spaces was more of a standard number provided for in Zoning Ordinances. She indicated that Dunkin Donuts typically experienced five stacked cars in the drive-through lane. Ms. Horning noted that a representative from Cracker Barrel's corporate office attended the Planning Commission meeting and informed them that they were happy to see the property redeveloped which had become an eyesore. She indicated that the applicant's main concern was the flow of traffic on the site and that removing two of the fuel pumps was a major decision in an attempt to improve traffic flow on the site. Ms. Horning stated that Dunkin Donuts was agreeable to having eight stacking spaces and that the menu board would be stationed at car #4. Typically they found that consumers used the drive-through to order coffee and a single donut because most people that wanted additional donuts typically parked their vehicle and went into the store to see the selection of donuts and that drive-through orders rarely took more than 101 seconds.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 4**

Ms. Horning said as far as the impact to the other business owners, obviously Cracker Barrel was in favor of the redevelopment of the site and that it had been her experience with other Dunkin Donut sites that if there were several customers lined up in the drive-through, motorists would use the by-pass lane and park and go into the store. She pointed out that the site was also a gas station and that gas customers would come in to the store to purchase their coffee at the same time they purchased their gas. Ms. Horning noted that there were a number of practical difficulties associated with this site and when they met with staff during the design phase of the project, they attempted to accommodate 10 stacking spaces, but were unable to do so with the existing features on the site and still provide a by-pass lane. Ms. Horning said it was their intention to create a traffic flow where motorists were entering the site via Commercial Drive and exiting the site via Saginaw Highway.

Mr. Reed said by looking at the site plan, it would be very challenging to accommodate 10 stacking spaces based on the current layout of the site and the existing underground storage tanks.

Ms. Horning noted that an additional 40 feet would be needed to accommodate 10 stacking spaces, as well as provide adequate turning radius for vehicles and trucks while still maintaining adequate access for emergency vehicles, as well as a by-pass lane.

Mr. Arking said if the Board were to approve the variance this evening, he questioned if the applicant would be willing to take measures to prevent motorist from backing up onto Commercial Drive if it became a problem.

Ms. Horning said yes.

Ms. Parr questioned if Dunkin Donuts offered other types of foods.

Mr. Koulouras said 78% of their customer base was in the morning and that a very small percentage of their business was during the afternoon where a majority of their sandwich orders consisted of bagels and cream cheese which also had a quick transaction time.

Mr. Newman asked if Dunkin Donuts offered a variety of coffees.

Mr. Koulouras said yes. He addressed a questioned regarding the number of stacking spaces other communities required by noting that 10 stacking spaces was something new that they were starting to see and that a year ago, most municipalities required seven stacking spaces for drive-throughs.

Ms. Laforet questioned whether providing 10 stacking spaces for the drive-through would be a practical difficulty and unnecessary hardship.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 5**

Ms. Horning said that was correct because of where the fuel tanks were located on the site, the location of an existing easement, and provide for emergency vehicle access.

Ed Reed, Economic Development Coordinator, addressed the Board by noting that there were several sites within the Township that were in need of redevelopment and that the subject parcel fit within that category. He indicated that Mr. Koulouras had met with staff and had hired an engineering firm to look at environmental issues and it had been determined that it would not be in Mr. Koulouras' best interest to remove the existing fuel tanks without creating environmental issues. Mr. Reed noted that he had spoken to Community Development Director Mark Graham regarding the 10 space stacking requirement and Mr. Graham had informed him that the requirement contained in the Zoning Ordinance was several years old and that it was his opinion that technology had improved over the years allowing orders to be processed in a timelier manner. Mr. Reed felt a donut and coffee shop at this location would add value to the property and that a drive-through was essential in order to make the investment into the property work. Mr. Reed also felt that if there was a lineup at the drive-through, motorists would park and go inside to order rather than wait in the drive-through lane, or just by-pass the establishment all together.

Ms. Parr noted that a former Dunkin Donuts located at the northeast corner of the Saginaw/Thomas L Parkway intersection only had five or six stacking spaces and that the proposed design of the subject parcel would provide for better circulation and much safer traffic flow.

**MOTION BY HICKS, SECONDED BY LAFORET, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 7-0.**

Mr. Hicks pointed out that a variance ran with the property and not the applicant. He said the fact that it was a donut shop didn't mean that the property would always be a donut shop which was one of the reasons why the Zoning Ordinance didn't distinguish stacking spaces for specific uses. Mr. Hicks noted that granting a variance would still apply regardless of the use, or ownership, of the property. He pointed out that Taco Bell had requested relief from the stacking requirement and was denied. Mr. Hicks didn't feel that the Board could rely on the fact that customers would park and come into the store if there was a backup of cars in a drive-through and he used Tim Horton's as an example where motorists stacked up into the Value City parking lot and all the way around the building during the morning hours which didn't create a problem at this time due to the fact that Value City was vacant. However, he felt the subject parcel was a problem site from the standpoint that it had never been easy to get in and out of and even one car backed up onto Commercial Drive would be problematic. Mr. Hicks appreciated the fact that the site was encumbered by an easement, but the encumbrance was also a benefit because it was an ingress/egress easement and it could be said that if the encumbrance wasn't there, there wouldn't be a problem, but it could also be said that the applicant

## **ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 6**

wouldn't be locked into an extra ingress and egress. Mr. Hicks said the practical difficulty in this case was not the use of the property, but that the applicant was requesting to add a drive-through which created the practical difficulty.

Ms. Laforet said she had been looking at the request from the standpoint of in this day age, it seemed as though people were less likely to wait in a long line in the drive-through and that motorists were more likely to park their car and go into the store or by-pass the business all together and go someplace else. Ms. Laforet felt even one car stopped in Commercial Drive and disrupting traffic would encourage motorists to either by-pass the drive-through or continue on.

Mr. Hicks said the Clark gas station experienced the same problem where motorists backed up onto Clark and Saginaw Highway when gas prices started to change and their prices didn't which created a very dangerous situation. He said while there were some motorists that wouldn't park out into the street, there were those that would.

Mr. Arking said Mr. Hicks was correct about the Tim Horton's parking situation and the backup of cars within their drive-through.

Mr. Hicks said even though Tim Horton's transaction time was quick, cars still stacked up within the drive-through.

Ms. Laforet said she would have more of a concern that the applicant be required to provide 10 stacking spaces and not provide ingress and egress for emergency vehicles and being limited due to the location of the fuel tanks. She said Mr. Hicks was correct in that the variance went with the land, but the fact that the applicant was removing four fuel pumps would traffic circulation on the site.

Mr. Hicks said he didn't disagree with Ms. Laforet, but the practical difficulty was the desire to install a drive-through and reiterated the fact that the Board had denied Taco Bell's request for relief from the number of stacking spaces. Mr. Hicks stated that Mr. Graham was probably right in that this was an issue that needed to be revisited.

Mr. Reed indicated that not only has technology changed, but what distinguished this request from the Taco Bell request was that there were other concerns with the Taco Bell property that were different from this request. He said while he could appreciate Mr. Hick's concerns with saying yes to one request and no to another, he felt the two cases were different.

Mr. Hicks said the Board treated each case on its own merits, but the Board also attempted to apply similar factual patterns and similar results.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 7**

Mr. Gruba pointed out that the Planning Commission had recommended approval of the special land use subject to five stipulations, one of which was that the special land use permit be terminated if the applicant failed to comply with those five stipulations. Mr. Gruba felt the Zoning Board of Appeals could also add stipulations to the granting of a variance.

Mr. Hicks pointed out that the Board couldn't revoke a variance once it was granted.

Mr. Gruba agreed that the variance couldn't be revoked, but the use could be terminated by the Township Board.

Ms. Laforet said when the Taco Bell request was reviewed; she questioned whether the Board was concerned with traffic backing up onto Saginaw Highway.

Mr. Hicks said the Board was concerned with traffic not only backing up into Saginaw Highway, but that traffic would impede cross access from neighboring businesses who shared driveways.

The Board discussed the possibility of installing signage that would prohibit "left" turns onto Saginaw from Commercial Drive, but it was stated that Commercial Drive was a private road and that the Township didn't have any jurisdiction over the road. The difficulty of enforcing turning movements was also discussed even if signage was installed prohibiting "left" turning movements onto Saginaw Highway.

Ms. Laforet said while she understood Mr. Hick's concerns, with today's technology and society being impatient and not wanting to wait in line, she didn't see the request as a problem. Ms. Laforet said she had witnessed cars stacked up in drive-through, but it was at locations where there was sufficient stacking room. She felt that if motorists saw that there wasn't adequate room for them to enter a drive-through without being in the road, there was a greater likelihood that they would pull into the parking lot or proceed on. Ms. Laforet expressed concerns that if the request wasn't approved, the applicant would move forward with the project without a drive-through with the risk of going out of business and the property would end up vacant again. She questioned whether the Board could approve the variance with the stipulation that the matter could be revisited if the site experienced traffic problems.

Mr. Gruba noted that the Board could place stipulations on the granting of the variance.

Mr. Hicks agreed that stipulations could be attached to the variance, but he would be concerned about approaching a business owner after they had made the investment into the property and inform them that the Township was going to revoke their variance. Mr. Hicks inquired about the applicant's timeline.

**ZONING BOARD OF APPEALS REGULAR MEETING OF MAY 14, 2013 P. 8**

Mr. Koulouras noted that he would like to be opened before November. He informed the Board that he was also concerned about traffic circulation on the site and how quickly customers were served. He pointed out that one of his other locations had “pull ahead” spots and that he could designate a few spots as pull ahead spots on site in an attempt to alleviate the Board’s concern with traffic backing up into Commercial Drive.

Mr. Hicks indicated that Taco Bell wanted to create “pull ahead” spots as well. Mr. Hicks noted the reason why he inquired about the applicant’s time line was for the reason of considering an amendment to the Zoning Ordinance which would eliminate the need for the applicant to make any special on-site accommodations.

Mr. Reed stated that he wasn’t in favor of tabling this request due to the fact that it was a sound proposal and that the applicant had requested a variance based on its merits.

Mr. Arking asked if the Board could take a short recess so that staff could gather material from the Taco Bell request so that the Board could review the reasons why their variance request was denied.

Mr. Reed felt the two cases were unrelated and involved different circumstances. He felt technology had advanced since the Taco Bell request came before the Board and the speed of customer transactions was quicker.

Ms. Parr inquired as to whether staff had received any input from the Road Commission or MDOT regarding the applicant’s special land use permit.

He noted that staff had not received any correspondence from MDOT regarding the existing entrance along Saginaw Highway. Also, since Commercial Drive was a private road, staff didn’t provide the Road Commission with a site plan.

The applicant explained to the Board how “pull ahead” spaces worked which enabled customers to pull ahead if their order exceeded 47 seconds. He reiterated the fact that most of their morning traffic consisted of customers purchasing coffee and that there would be little reason to pull ahead.

Mr. Arking questioned whether the applicant would still be required to provide 10 stacking spaces within the drive-through lane, or would two “pull ahead” spots provide the necessary stacking room.

Mr. Gruba noted that historically, stacking spaces were calculated from the drive-through window.

**MOTION BY LAFORET, SECONDED BY BARNHART, THAT IN CASE NO. V-13-2-16, CHRIS KOULOURAS, OWNER OF THE PROPERTY AT 8205 W.**



**SAGINAW HIGHWAY, A VARIANCE FOR REQUIRED STACKING SPACES FOR A RESTAURANT DRIVE-THROUGH PER SECTION 18.15.0 C(1) OF THE DELTA TOWNSHIP ZONING ORDINANCE, BE APPROVED FOR THE FOLLOWING REASONS:**

- 1. THE APPLICANT HAS DEMONSTRATED THAT HE HAS SATISFIED ALL FOUR OF THE BASIC CONDITIONS SET FORTH IN THE ZONING ORDINANCE AND SPECIAL CONDITION #1, WHERE THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS WHICH PREVENT CARRYING OUT THE STRICT LETTER OF THIS ORDINANCE. THESE HARDSHIPS OR DIFFICULTIES SHALL NOT BE DEEMED SOLELY ECONOMIC, BUT SHALL BE EVALUATED IN TERMS OF THE USE OF A PARTICULAR PARCEL OF LAND, FOR THE FOLLOWING CONDITION:**

- a. THAT THE APPLICANT CREATE TWO “PULL AHEAD” SPACES ON THE SITE AND THEIR LOCATION BE DETERMINED BY STAFF DURING SITE PLAN REVIEW.**

**VOICE VOTE. CARRIED 6-1 (Hicks).**

- VIII. OTHER BUSINESS - None**
- IV STAFF COMMENTS - None**
- X BOARD COMMENTS**

**MOTION BY LAFORET, SECONDED BY ARKING, THAT STAFF WORK WITH THE TOWNSHIP BOARD IN REVIEWING THE ORDINANCE TO POTENTIALLY AMEND THE ZONING ORDINANCE TO REDUCE THE NUMBER OF STACKING SPACES REQUIRED FOR A RESTAURANT DRIVE-THROUGH AS PER SECTION 18.15.0C(1).**

**VOICE VOTE. CARRIED 7-0.**

- XI ADJOURNMENT**

Chairman Reed adjourned the meeting at 7:11 p.m.

DELTA CHARTER TOWNSHIP  
Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink